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The EU List of Non-Cooperative Tax Jurisdictions: Implications for Global Businesses

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Tax

On December 5, the European Union announced a "blacklist" of 17 countries it considers to be non-cooperative tax jurisdictions, with a further 47 countries at risk of being added to the list if they fail to meet EU criteria. The countries on the "blacklist" face possible economic sanctions and restrictions which businesses should be considering. The list is part of the EU's ongoing work to reduce international tax evasion and avoidance.

The EU list of non-cooperative tax jurisdictions, which contains some surprises such as South Korea and the United Arab Emirates, is:

- American Samoa
- Bahrain
- Barbados
- Grenada
- Guam
- Korea (Republic of)
- Macao SAR
- Marshall Islands
- Mongolia
- Namibia
- Palau
- Panama
- Saint Lucia
- Samoa
- Trinidad and Tobago
- Tunisia
- United Arab Emirates

The EU has promised new legislative measures which could have a real impact on listed countries and companies operating in them. It has already restricted the channeling of EU funding through entities in listed countries, so that only direct investment of certain funds is permitted in these countries. This applies to the European Fund for Sustainable Development (EFSD), the European Fund for Strategic Investment (EFSI), and the External Lending Mandate (ELM).

The EU has signaled a desire to introduce stricter reporting requirements for multinationals with activities in listed jurisdictions and to make tax-motivated transactions routed through a listed country automatically reportable to tax authorities.

Member States are also being encouraged to employ coordinated sanctions against listed countries which would impact companies operating in them. Proposals include increased monitoring and audits, withholding taxes, special documentation requirements, and anti-abuse provisions. However, it remains to be seen whether EU Member States are able to reconcile

their competing interests in this regard as some states, like Luxembourg and Malta, have been reported as opposing stricter sanctions.

As a result, businesses operating in or with a link to the 17 currently listed countries and also the 47 countries with commitments to address deficiencies should analyse their existing and planned operations and arrangements and conduct impact assessments in order to consider whether restructuring is required to take into account the new tax landscape. Such assessments should take account of the legislative proposals of the EU, Member States, and listed countries and include factors such as tax arrangements, transfer pricing, brand management, and funding options.

In conclusion, according to the EU, the list is intended to "*deal more robustly with external threats to Members States' tax bases and to tackle third countries that consistently refuse to play fair on tax matters*." As to the future, "*the process does not stop here. We must intensify the pressure on listed countries to change their ways.*"

The European Commission press release can be found here and the European Commission Fact Sheet can be found here.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our UAE and Tax practices:

Haykel Hajjaji	+971 4 247 2109	hhajjaji@cov.com
Jack Greenwald	+971 4 247 2111	dgreenwald@cov.com
Guy Dingley	+44 20 7067 2026	gdingley@cov.com

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